

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 134 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

COMMISSIONER OF INCOME-TAX

Versus

BHARAT VIJAY CONSTRUCTION CO

Appearance:

MR MANISH R BHATT for Petitioner
NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI and
MR.JUSTICE KUNDAN SINGH

Date of decision: 06/03/98

ORAL JUDGMENT

Per: R.K.Abichandani, J.

The Income Tax Appellate Tribunal has referred the following question to this Court for its opinion under Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as the "Act, 1961"):

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in coming to the conclusion that the assessee is entitled to Investment Allowance of Rs.6,62,750/- under Section 32A of the I.T.Act?"

2. In its Return for the assessment year 1982-83, the assessee-firm which carried on the business of constructing bridges, roads, dams, etc., claimed deduction of Investment Allowance under Section 32A of the Act, 1961. The I.T.O. rejected the claim. However, the C.I.T. (Appeals) accepted the assessee's claim following the decision of the Orissa High Court in the case of N.C.Buddharaja & Co. reported in 121 I.T.R. 212. The Tribunal, following its earlier decision confirmed the order of the C.I.T. (Appeals) and dismissed the appeal of the Revenue.

3. In C.I.T. v. N.C.Buddharaja & Co., reported in 204 I.T.R. 412, the Hon'ble Supreme Court, while considering the question as to whether the assessee was entitled to investment allowance on the actual cost of the machinery and plant installed for the purpose of its business pertaining to construction of dams and canals under Section 32A of the said Act, in terms held that sub clause (iii) of clause (b) of sub-section (2) of Section 32A of the Act does not comprehend within its ambit, construction of a dam, a bridge, a building, a road, a canal and other similar constructions. In view of this decision of the Hon'ble Supreme Court, we hold that the Tribunal committed an error in coming to the conclusion that the assessee was entitled to Investment Allowance of Rs.6,62,750/- under Section 32A of the Act, 1961. The question is therefore answered in the negative in favour of the Revenue and against the assessee. The Reference stands disposed of accordingly with no order as to costs.

(R.K.Abichandani, J.)

(Kundan Singh, J.)

(sunil)